

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
March 19, 2004 Session

**In re: B.L., R.L., V.A., and R.A.**

Appeal from the Juvenile Court for Davidson County  
Nos. 2019-54147, 2019-54148, 2019-54150, 2119-59856     Betty K. Adams, Judge

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No. M2003-01877-COA-R3-PT - **Filed November1, 2004**

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This appeal involves the termination of a mother's parental rights regarding her four children. Three of the children were removed in August 2000 and the fourth child was removed at birth in January of 2001. A Petition to Terminate Parental Rights was filed in March 2003, and after a hearing on June 16, 2003, the trial court terminated mother's parental rights for abandonment in failing to support her children and pursuant to Tennessee Code Annotated section 36-1-113(g)(3) for persistent conditions or other conditions which prevent safe return of the children in the near future. We find that there was clear and convincing evidence for termination of mother's parental rights under section 36-1-113(g)(3) of the Code and that termination was in the best interest of the children. We affirm the trial court's decision to terminate mother's parental rights.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court  
Affirmed as Modified**

WILLIAM B. CAIN, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S. and FRANK G. CLEMENT, JR., J., joined.

Kelli Barr Summers, Brentwood, Tennessee, for the appellant, [S.A.]

Paul G. Summers, Attorney General & Reporter; Russell T. Perkins, Deputy Attorney General, and Daniel W. Champney, for the appellee, Tennessee Department of Children's Services.

Thomas H. Miller, Franklin, Tennessee, for the guardian ad litem, Thomas H. Miller.

**OPINION**

The Mother and her three children (ages 9, 3, and 21 months at that time) came to the attention of the Department of Children's Services (DCS) on March 6, 2000 after Mother entered a domestic violence shelter with her children. She was initially referred to DCS for numerous instances showing general neglect of the children. Among other things, Mother failed to supervise

her children, did not change diapers in a timely manner, and did not see that they were fed properly. There were also reports of improper discipline and problems with Mother's temper.

A Petition for Temporary Custody was filed by DCS on March 21, 2000. This Petition alleged general neglect and inappropriate care of the children as well as failure to take her medication for treatment of depression affecting her ability to parent. The trial court appointed a guardian ad litem, ordered intervention of social services and rescheduled the hearing. In the interim, extensive services were provided to Mother. For several months she was provided with homemaker services several times a week from several different groups as well as Community Services Agency (CSA) monitoring and assistance. In addition, her children were provided with daycare and she received assistance in obtaining a three bedroom townhouse in which to live and necessary furniture. At the subsequent hearing on May 30, 2000, it appeared that Mother was responding to these services. The trial court ordered long term in-home services and set another hearing for September 2000.

Unfortunately, Mother failed to make much further improvement. Mother failed to take advantage of the daycare services provided, as she seemed unwilling or unable to get up in the morning and get her children dressed and ready to catch the daycare bus. She failed to perform tasks given to her between homemaker visits. Also, based on the records of the Community Services Agency (CSA) and the homemaker services' reports, Mother continued to show signs of severe depression and lack of motivation. She made only modest progress in improving her parenting skills and showed virtually no improvement in her housekeeping abilities. Her behavior demonstrated a mental and emotional inability to parent her children.

On August 16, 2000, the guardian ad litem became concerned for the children's welfare and filed an Expedited Petition for DCS Custody requesting that the children be removed. The homemaker who had been assisting Mother also recommended removal of the children. An emergency hearing was held, after which the court found that reasonable efforts were not working, and the children were removed from Mother's custody. Permanency Plans were put into place that required the mother to keep her scheduled visits and maintain bonding with her children, obtain a psychological evaluation and parenting assessment in order to determine her ability to care for her children, keep scheduled medical appointments and follow medical advice including taking her prescription medication, maintain contact with DCS by informing them of her address and any other change in circumstances, and demonstrate adequate parenting skills.

At the time of the children's removal, Mother was pregnant with her fourth child. This child was removed to the custody of DCS in January of 2001, days after his birth. A Permanency Plan was drawn up for this fourth child, which was basically the same as the plans for the previous three children but added that Mother must demonstrate adequate housekeeping skills and provide a safe living environment for the child.

At the hearing of March 13, 2001, the trial court found that Mother was seeing a physician and had been diagnosed with depression. However, she was not on any medication. The court

further found that the mother was not making any progress, and the court was concerned with the period of time the children had already spent in state custody.

The Permanency Plans were reviewed and revised in August of 2001. At this time, the goals with regard to Mother, including addressing her mental health problems, remained the same. At the August 21, 2001 permanency hearing, the trial court found that Mother was “working the plan,” had attended counseling, and was scheduled for a parenting assessment. However, the mother had still not made enough progress to consider returning her children.

Mother’s mental health provider became unable to treat her in September 2001 due to leaving his practice and referred her to another provider. Mother saw her new mental health provider on only two occasions, September 2001 and May 2002, then ceased treatment altogether. At that time, issues with regard to her need for medication and willingness to take medication still existed. Mother still refused to admit any mental or emotional problems and rejected the need for medication. Since that time, Mother’s mental health issues continued to go unaddressed. DCS also had trouble obtaining an adequate psychological evaluation to determine her mental and psychological functioning, (partially due to DCS’s failure to provide an interpreter and partially due to Mother’s lack of cooperation). Mother also continued to have no permanent or even adequate housing, as she had been evicted from the townhouse, and showed little improvement in her parenting skills.

On November 7, 2001, an Agreed Order of Adjudication was entered in the court. In this Order, the parties agreed that the following facts were established by clear and convincing evidence:

1. Prior to March, 2000, the mother, [S.A.], separated from [P.L.], the father of [V.], [B.] and [R.], and fled to a domestic violence center. The mother left the children unattended, used inappropriate corporal punishment and failed to attend to the children’s hygienic needs. On one occasion, she failed to bring formula to the shelter for [B.]. The mother was non-compliant with her medications for depression. The mother was lacking in appropriate parenting skills, time management skills and organizational skills. However, she demonstrated a willingness to learn new skills and to improve. The Exchange Club Family Center report of May, 2000 indicated that, with the assistance of intensive in home services, the mother had made significant improvement.
2. However, by August, the in-home services worker expressed concern that the mother was not feeding the children consistently; that a faucet had been left running in a bathroom, causing the downstairs to flood and the mother was not aware of the condition; that the toilet was clogged; that feces were floating in the bathwater where the children bathed. As a result, the children were taken into custody on August 16, 2000.

3. On January 14, 2001, [S.A.] gave birth to another child, [R.A.]. At that time, the homemaker services working with the mother believed that she had made some improvement, but that her improvement was not such to warrant return of her children.
4. A recent psychological report indicates that she functions within a mild mental retardation range and appears to have an “instrumental understanding of parenting,” and that it is “unclear that she is capable of addressing the differing developmental needs of her children at different developmental periods.” The psychologist recommended extensive case management services and structured supervised visitation focusing on her functioning as the primary parent.

The children’s Permanency Plans were updated again in June of 2002. At this time, the goal of adoption was added. The updated Permanency Plans required that Mother maintain bonding with her children, address her need to improve parenting skills through a parenting assessment, keep all medical appointments, maintain contact with DCS and provide them with any change of information, demonstrate adequate parenting skills, maintain stable living environment and employment, stabilize her mental health condition, and pay court ordered child support.

At the August 30, 2002 permanency hearing, the trial court found that there continued to be problems in obtaining an adequate parenting assessment and mental health evaluation. Although Mother was exhibiting some parenting skills, she was still in need of extensive assistance. Further, Mother shared a small apartment that was not suitable for the children.

The November 2002 quarterly progress report showed that problems obtaining the psychological evaluations still existed. Previous psychological evaluations had been unacceptable due to language barriers, and Mother had failed to attend an appointment scheduled for November 1. Mother had also recently married a man she met only weeks before who lived in Massachusetts. However, she had no plans to move to Massachusetts to live with him, and she was continuing to live at her friend’s apartment in Nashville. Her living situation had not changed, and she still did not have suitable housing or a suitable living environment for her children. The issue of her depression and her need for medication also remained unaddressed.

In December of 2002, while still married to her husband in Massachusetts, Mother moved to Florida after becoming interested in a man living there. She also failed to complete her psychological evaluation prior to moving to Florida and failed to inform DCS of her decision to move or provide them with her address and phone number in Florida. According to the January quarterly progress report, “[S.A.] has not completed a psychological, obtained health insurance, attended a mental health program, maintained employment, and she does not have a stable living environment.” The Petition to terminate her parental rights was filed on March 18, 2003. From the time she moved to Florida in December of 2002 until her court date in June of 2003, Mother saw her children on only three occasions.

After the hearing of June 16, 2003, the trial judge made the following findings:

[V.], [R.] and [B.] first came to the Court's attention on March 21, 2000 when the Department of Children's Services (DCS) filed a petition alleging that the children were dependent and neglected and asking that they be placed in the Department's legal custody. The petition alleged that the mother had repeatedly neglected the children by leaving them unattended, by failing to feed them properly, by using inappropriate discipline, by failing to change their diapers and clean them, by failing to take her psychotropic medication, and by refusing to enter into a safety plan. By the time the petition was filed the mother and the children were residing in a domestic violence shelter. The Department believed that the children would be at imminent risk of serious harm when the mother no longer had the structure and supervision afforded by the shelter.

The appearance hearing on the Department's petition for custody has (sic) held on April 10, 2000. At that time DCS reported that the mother would leave the shelter with her children on April 15 to move into an apartment. DCS asked the Court to put its petition "on hold" while it continued to evaluate the mother's progress and the degree of risk to the children. A review was set for May 30.

On May 30, 2000 DCS reported that the mother was making progress in improving her parenting skills. The Court set the case for further review. Long-term services were to be provided to the family.

On August 16, 2000 the guardian ad litem filed an expedited petition for custody. He alleged, that although intensive services had been provided to the mother for many months, she had made little progress in acquiring and practicing the basic skills necessary to care for her children and to keep them safe. The Court placed the children in DCS custody; they have remained in foster care since then.

[R.] was placed in DCS custody shortly after he was born on January 14, 2001. He has been in foster care continuously since then.

The parties entered into an agreed order of adjudication of all pending petitions in November, 2001. . . .

. . . .

By agreement [V.], [R.] and [B.] were found to be dependent and neglected children as a result of their mother's failure to adequately supervise and parent them. [R.] was found to be a dependent and neglected child due to his mother's failure to adequately supervise and parent his siblings.

The three oldest children have been in foster care for almost three years. During that time the mother has made little, if any, progress in remedying the conditions that caused her children to be placed in foster care. In fact when she was asked what she had learned from parenting classes, she replied, "Nothing." Although she says she wants her children back, her actions belie that claim. Ms. Swann, who supervised some of the visits, described the mother's lack of supervision and lack of

interaction with her children during those visits. [Mother] testified that she married a social worker who lives in Boston because she thought that would help her get her children back. She stated that they never lived together and within a few weeks she realized that marrying him had been wrong. Most troubling of all was her decision to move to Florida in December, 2002 without telling her case manager. She lives there with [R.D.], whom she met through a friend. Both of them testified that, although [Mother] works at McDonald's, [R.D.] is responsible for all of the expenses except the cable bill. The automobile and the lease for the house are in his name. [Mother] testified that she has saved some money but that she does not know how much. During this same period, no child support has been paid.

David Frensley is a senior psychological examiner who recently performed a psychological evaluation on the mother. He has performed thousands of such evaluations over a 16-year period. Although he did not do enough testing to make a definite Axis I or Axis II diagnosis, he testified that her profile is consistent with a possible diagnosis of either major depressive disorder, schizophrenia, or schizoaffective disorder. He found indications of significant psychological problems and believes that [Mother's] primary need is a commitment to her mental health treatment. Regardless of the clinical diagnosis and treatment setting, three issues need to be addressed in therapy: her problems with interpersonal relationships, difficulties in controlling her emotions and expressing anger appropriately, and social isolation and withdrawal. The parenting implications are obvious and are consistent with the finds of fact in the agreed order of adjudication from November, 2000. But after hearing Mr. Frensley's testimony and reviewing his report, [Mother] continues to deny that anything is wrong or that she could benefit from therapy.

. . . .

[V.], [R.] and [B.] have lived with [L.M.] since they first came into foster care. The children [have] adapted extremely well to [L.M.] and her husband, who want to adopt them. [R.] has lived with [L.R.] his entire life, and she wants to adopt him. If the children are adopted, the adoptive parents would make sure that [R.] and his siblings see each other frequently.

The trial court terminated her parental rights for abandonment for failure to support her children and pursuant to Tennessee Code Annotated section 36-1-113(g)(3) stating:

[T]he children have been removed from the home of the respondents by order of a court for a period of six (6) months and (i) the conditions which led to the children's removal or other conditions which in all reasonable probability would cause the child to be subjected to further abuse or neglect and which, therefore, prevent the child's safe return to the care of the parents still persist; (ii) there is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parents in the near future; and (iii) the continuation of the parent and

child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home. It is apparent to the Court, and the Court so finds, that the mother's mental health condition contributed to the removal of the children and that it remains untreated. There has been no progress made in addressing her mental health issues since the removal of the children. The Court finds that the mother appears confused at best or incredible at worst when she states that she knows of no mental health condition and that she had never been on medication.

The trial court further found that termination was in the best interests of the children pursuant to § 36-1-113(i) of the Code.

Mother appeals and presents three issues for review: (1) "The trial court erred in finding that there was persistence of conditions that prevented the children's return to the mother." (2) "The trial court erred in finding that the mother abandoned the children by willfully failing to support them." (3) "The trial court erred in finding that termination of parental rights is in the best interests of the children." We affirm the trial court's decision to terminate Mother's parental rights finding that the children had been in foster care for over six months, that there were persistent conditions or other conditions which prevented the children's return to their mother in the near future and that termination was in the best interests of the children.

Although parents have a well-settled fundamental right to the care, custody, and control of their children, *Stanley v. Illinois*, 405 U.S. 645 (1972), these rights are not absolute. Courts may terminate parental rights upon a showing of clear and convincing evidence that one of the grounds for terminating parental rights has been proven and that termination would be in the best interest of the child. Tenn. Code Ann. §36-1-113(c) (Supp. 2003); *see also Santosky v. Kramer*, 155 U.S. 745 (1982); *In re: Drinnon*, 776 S.W.2d 96 (Tenn.Ct.App. 1988); *Dep't of Human Services v. Riley*, 689 S.W.2d 164 (Tenn.Ct.App. 1984). Clear and convincing evidence is a heightened standard of proof reflecting the importance of the parental rights involved.

The "clear and convincing evidence" standard defies precise definition. *Majors v. Smith*, 776 S.W.2d 538, 540 (Tenn.Ct.App. 1989). While it is more exacting than the preponderance of the evidence standard, *Santosky v. Kramer*, 455 U.S. at 766, 102 S.Ct. at 1401; *Rentenback Eng'g Co. v. General Realty Ltd.*, 707 S.W.2 524, 527 (Tenn.Ct.App. 1985), it does not require such certainty as the beyond a reasonable doubt standard. *Brandon v. Wright*, 838 S.W.2d 532, 536 (Tenn.Ct.App. 1992); *State v. Groves*, 735 S.W.2d 843, 846 (Tenn.Crim.App. 1987).

Clear and convincing evidence eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence. *See Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n. 3 (Tenn. 1992). It should produce in the fact-finder's mind a firm belief or conviction with regard to the truth of the allegations sought to be established. *In re Estate of Armstrong*, 859 S.W.2d

323, 328 (Tenn.Ct.App. 1993); *Brandon v. Wright*, 838 S.W.2d at 536; *Wiltcher v. Bradley*, 708 S.W.2d 407, 411 (Tenn.Ct.App. 1985).

*O'Daniel v. Messier*, 905 S.W.2d 182, 188 (Tenn.Ct.App. 1995).

One of the grounds found by the trial court to warrant termination of parental rights was persistence of conditions or other conditions as provided in Tennessee Code Annotated section 36-1-113(g)(3)(A)(i-iii). This section provides for termination of parental rights if:

(3)(A) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(i) The conditions which led to the child's removal or other conditions which in all reasonable probability would cause the child to be subjected to further abuse or neglect and which, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

The children in this matter were initially removed from Mother's custody in August of 2000 for numerous reasons. There was general neglect of the children in that she did not feed them properly, failed to change diapers in a timely manner, used wrong size diapers, left the children unattended, used inappropriate punishment, and failed to attend to the children's hygienic needs. Mother, in general, showed poor parenting skills, poor time management skills, poor organizational skills, poor housekeeping skills, and evidenced a general mental and emotional inability to parent her children such that the juvenile court felt that these children were in danger. These conditions persisted even after many months of extensive in-home services prior to the children's removal on August 16, 2000. Over the next two and a half years Mother showed little, if any, significant improvement in any of the areas initially necessitating removal of the children, particularly with regard to her mental and emotional health. Mother has completely failed to address her mental health problems and continues to demonstrate a detrimentally unstable personal life.

There is evidence that Mother sought some mental health treatment and took prescribed medication for a period of time. However, based on medical records and testimony, she apparently received little treatment after June of 2001 and ceased taking any medication.

Her first case manager, Dorris Dodd, testified that Mother initially showed some improvement in her depressive symptoms as well as her parenting skills. However, when Ms. Dodd left in January of 2002, a year and a half after these children were taken into custody, Mother's situation was such that she was still only allowed supervised visitation. At that time, Ms. Dodd was

just considering unsupervised visitation once Mother received a psychological evaluation, and she thought that the children *might* be returned to Mother by Christmas of 2002.

The case worker who handled Mother's case from January of 2002 until May of 2002 did not testify. However, Connie Swann, case manager beginning May 1, 2002, testified to her observations during her eight months of case management. From May 1, 2002 until Mother left for Florida in December of 2002, she lived with a roommate in an apartment that would not accommodate any of her four children. In late 2002, Mother married a man who lived in Boston, Massachusetts. However, she has never lived with her husband. During this time, Ms. Swann observed a general lack of supervision over the children during visits. Although she attended the majority of her scheduled visits with the children during this period, she continued to show poor parenting skills, a lack of understanding of their needs, and an inability to control the children. The record also contains no evidence that Mother recognized the children's birthdays or other holidays with gifts or cards of any kind during their time in state custody, nor has she sent her children any cards or letters between visits.

Sometime around November or December of 2002 she met her current boyfriend, [R.D.], with whom she was residing at the time of the hearing. In late December 2002, Mother decided to move to Miami, where her boyfriend lived, without considering the effect of this move on her children and without notifying DCS or her roommate.

At the time of the hearing, Mother was still not prepared to have her children returned to her, and had still not obtained a suitable living environment for her children. She was living with her boyfriend in a one bedroom apartment provided by him. She was working at McDonald's making \$5.50 an hour but could not state how much money, if any, she had saved, although her boyfriend paid almost all of her living expenses. She continued to deny any mental health problems and had made no effort to seek treatment, even though she had obtained health insurance through the state since moving to Florida. She further stated that she had no intention of leaving Miami and moving back to Nashville for any reason. Her plan was to travel every week from Miami, Florida to Nashville, Tennessee to visit her children until they could be returned.

The evidence is more than clear and convincing that, after three years, the conditions which led to her children's removal or other conditions which would subject the children to further neglect continue to prevent the children's safe return to Mother. Mother continues to demonstrate mental and emotional instability, poor judgment and poor parenting skills. Most disturbing is where the children obviously fall in the order of priorities in her life, as demonstrated by her decision to move to Miami and stay there, even if it meant losing her children. Based on Mother's steadfast denial of any mental health problems and her unwillingness to consider leaving Miami, as well as the amount of assistance previously provided to her without substantial progress and the length of time Mother has been given to effect the necessary life changes, we see clear and convincing evidence that there is little likelihood that these conditions will be remedied at an early date so that the children can be returned to Mother in the near future. We also agree that any continued relationship with Mother would greatly diminish the children's chances of integration into a safe, stable and permanent home.

After three years, Mother did not come into court ready to have her children returned, or even with any evidence that she would be ready at a foreseeable time in the future. She came to court asking for “another chance.” All four children are currently living with loving families that wish to adopt them. The record in this case provides no evidence that Mother is capable of remedying the many problems preventing the return of her children or that she is even willing to put forth the effort to try. *See In Re: T.S. and M.S.*, No. M1998-01286-COA-R3-CV, 2000 WL 964775 (Tenn.Ct.App. July 13, 2000).

One primary argument asserted by Mother in her appeal was that DCS had not made reasonable efforts toward helping Mother with her various problems. This is particularly alleged with regard to obtaining a psychological evaluation and parenting assessment, as there were several failed attempts and an adequate report was not obtained until just a few days before the hearing. However, Mother was well aware that obtaining assistance for her mental and psychological problems was a primary issue to be resolved prior to her regaining custody of her children from the beginning of DCS’s involvement. Mother even attended psychological treatment for approximately one year beginning in September of 2000, but failed to continue treatment. DCS also tried to assist Mother with getting insurance through TennCare so that psychological treatment would be more easily obtained. However, Mother failed to follow through with that too.

One major problem in obtaining an adequate psychological evaluation and parenting assessment was Mother’s poor English skills, as Mother is from Haiti and English is not her primary language. Although DCS was responsible for assisting Mother in obtaining a psychological evaluation and parenting assessment to provide all parties involved with an understanding of Mother’s needs, Mother also bears some responsibility for obtaining these necessary evaluations. DCS referred Mother to four different psychologists on at least six different occasions. At the first of these appointments in March 2001, Mother was accompanied by her attorney. Certainly from that time forward, Mother and her attorney were aware of the need for interpretive services, yet other than bringing her roommate to one appointment, neither Mother nor her attorney assisted DCS with finding an appropriate interpreter to help further the process. Additionally, Mother failed to show up for several appointments, and during the time Mother was receiving treatment for her mental health problems, she steadfastly disregarded her doctor’s recommendations and refused to take her medication.

Although it can certainly be said that DCS could have done more to obtain the psychological evaluation and parenting assessment sooner, on the question of whether DCS made reasonable efforts, the record reflects that they did. They provided her with appointments to obtain psychological evaluations in March 2001, August and September 2001, November and December 2002, and May 2003. Further, the requirement of the psychological evaluation and parenting assessment was for the purpose of assessing Mother’s problems to determine what measures needed to be taken to address these problems. The final psychological evaluation stated what Mother had known for several years, as evidenced by her own medical records as far back as September of 2000, that she has significant psychological problems and is in need of extensive mental health treatment. Mother was ultimately responsible for obtaining the necessary treatment. She has continually denied

her need for treatment, up to and including the date of trial, failed to take prescribed medication, and failed to obtain necessary medical help. There is no reason to think that one more person telling her to get help would have changed anything.

Mother was also provided numerous types of assistance for her home and parenting skills through Hometies, Homemaker Services, and CAP supervision. The evidence in the record reflects that Mother's attitude and level of cooperation never improved. Mother has shown repeatedly that she does not believe she needs any assistance and that she is unwilling to do her part when assistance is provided.

Clear and convincing evidence has established the persistence of conditions which led to the child's removal in the first place, and the parental rights of the Mother were properly terminated pursuant to Tennessee Code Annotated section 36-1-113(g)(3)(A)(i-iii).

Without making a finding of fact that the failure of Mother to pay child support within the four consecutive months immediately prior to the filing of the Petition to Terminate was willful and intentional, the trial court terminated Mother's parental rights on the ground of abandonment by failure to support. *See* T.C.A. § 36-1-102(A). The proof establishes, without credible contradiction, that Mother was required by the June 2002 Permanency Plan to pay court ordered child support and that the August 30, 2002 order of the court required her to pay such child support in the amount of \$40 per week. Clear and convincing evidence also establishes, her protestations to the contrary notwithstanding, that she knew where she was to make her child support payments. The difficulty lies in trying to determine from this record whether or not she had the financial means to pay such support which finding is critical in determining whether or not her failure to pay child support was intentional and willful. *See In re Swanson*, 2 S.W.3d 180 (Tenn. 1999). The record shows that [Mother] earned \$6 an hour in Tennessee working as a restaurant employee and after her removal to Florida earned \$5.50 an hour as a McDonald's employee. Beyond this there is sparse evidence in the record as to her basic living expenses and the consistency of her work. Like the other elements of abandonment the burden rests upon the state to prove, not by a preponderance of the evidence, but by clear and convincing evidence that her failure to support her children was intentional and willful. *In re: D.D.V.*, No. M2001-02282-COA-R3-JV, 2002 WL 225891 (Tenn.Ct.App. 2002), in considering the entire record before the court we cannot say that the clear and convincing evidence standard of *O'Daniel v. Messier*, 905 S.W.2d 182 (Tenn.Ct.App. 1995) has been met in this case as to the required intent and willfulness of Mother in failing to pay court ordered child support.

Once at least one statutory ground for terminating parental rights has been established by clear and convincing evidence, it must also be determined that termination is in the best interests of the children. *See* Tenn. Code Ann. § 36-1-113(c)(2)(Supp. 2001). With regard to determining the best interest of the children, the Code provides:

(i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;

(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

....

Tenn. Code Ann. § 36-1-113(i)(Supp. 2001).

The trial court considered these factors and determined that termination was in the best interests of the children finding:

1. Respondents have failed to make such an adjustment of circumstance, conduct, or conditions as to make it safe and in the children's best interests to be in the home of the respondents.

2. Respondents have failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible.

....

4. A meaningful relationship has not otherwise been established between the respondents and the children.

5. A change of caretakers and physical environment would likely have a seriously adverse effect on the children's emotional condition.

6. The mother neglected the oldest three children when they lived with her before they were placed in foster care.

7. The mother's mental and/or emotional status would be detrimental to the children and would prevent the mother from effectively providing safe and stable care and supervision for the children.

....

It is in the best interest of the child and the public that the parental rights of the respondents be forever terminated and that the complete custody, control, and guardianship of these children be awarded to the Department of Children's Services.

We agree with the trial court that termination was clearly and convincingly shown to be in the best interests of the children.

The ruling of the trial court terminating Mother's parental rights is affirmed. Costs of this cause are assessed to the State of Tennessee, Department of Children's Services.

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WILLIAM B. CAIN, JUDGE